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November 9, 2016

VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: Reyes v. Prime Aid Pharmacy Corp. et al.
Docket No. 16-cv-2789-JMF

Dear Judge Furman:

We represent Defendants Prime Aid Pharmacy Corp. ("Prime Aid"), Alex Fleyshmakher, Igor Fleyshmakher, and Samuel Khaimov (collectively "Defendants") in the above-referenced matter. The parties jointly submit this letter seeking the Court's approval of the proposed settlement agreement in this matter, attached as Exhibit A.

In *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332 (S.D.N.Y. 2012), Your Honor articulated the factors a court should consider when determining whether a settlement agreement of Fair Labor Standards Act ("FLSA") claims is fair and reasonable. Your Honor stated a court should consider the following factors: "(1) the plaintiffs range of possible recovery; (2) the extent to which the settlement will enable the parties to avoid anticipated burdens and expenses in establishing their respective claims and defends; (3) the seriousness of the litigation risks faced by the parties; (4) whether the settlement agreement is the product of arm's-length bargaining between experienced counsel; and (5) the possibility of fraud or collusion." *Id.* at 335. Factors that weigh against approving a settlement include: "(1) the presence of other employees situated similarly to the claimant; (2) a likelihood that the claimant's circumstance will recur; (3) a history of FLSA non-compliance by the same employer or others in the same industry or geographic region; and (4) the desirability of a mature record and a pointed determination of the governing factual or legal issue to further the development of the law either in general or in an industry or in a workplace." *Id.*

In this action, Plaintiff Margarette Reyes ("Plaintiff") brings claims against Defendants for violation of the FLSA and the New York Labor Law ("NYLL") based on Plaintiff's allegation that she is owed unpaid overtime from Defendants. Reyes additionally brings claims against Defendants for failure to provide required notices under the Wage Theft Prevention Act.[1]

In settlement negotiations, Plaintiff provided Defendants with a damages calculation that calculated Plaintiff being entitled to $4,093.39 in unpaid overtime wages. The parties dispute whether stacked liquidated damages under the Fair Labor Standards Act and the Minimum Wage Act are awardable. *See Inclan v. New York Hospitality Grp., Inc.* 95 F. Supp. 3d 490, 506 (S.D.N.Y. 2015) ("we decline to rule that plaintiffs are entitled to cumulative liquidated damages under the FLSA and NYLL"); *see also Xochimitl v. Pita Grill of Hell's Kitchen, Inc.*, 2016 U.S. Dist. LEXIS 121259, at *54-55 (S.D.N.Y. Sept. 8, 2016) (same). With liquidated damages, based on Plaintiff's calculation of her unpaid overtime wages, the total with liquidated damages would be either $8,186.79 or $12,280.17, depending on whether stacked liquidated damages are awarded. Plaintiff's maximum damages for her Wage Theft Prevention Act claims is $10,000.

The proposed settlement agreement provides Plaintiff with $26,000, in excess of Plaintiff's calculation of maximum damages and in far excess of Defendants' calculation of maximum damages. The early settlement in this case allows the parties to avoid the burden and expense of litigation, while providing Plaintiff full relief for her allegations. Plaintiff and Defendants were both diligently represented by counsel who engaged in back and forth negotiations, assisted by Magistrate Judge Fox at a settlement conference held on September 28, 2016. While the Complaint is alleged as a collective action, no class members opted in to this action and no evidence was introduced that other employees of Prime Aid are similarly situated. Prime Aid has no history of FLSA non-compliance weighing against approval of the proposed settlement.

The proposed settlement agreement provides Plaintiff's counsel with $10,940.82 of the $26,000 settlement for attorneys' fees. This action arises under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the Minimum Wage Act, N.Y. Lab. Law § 650, *et seq.*, and the Wage Theft Prevention Act, 2010 N.Y. Laws 564. These laws, in combination, provide to a prevailing party in a civil action an award of attorney's fees and costs. *See* 29 U.S.C. § 216(b); N.Y. Lab. Law §§ 198(1)–(2), 663(1); *see also Gurung v. Malhotra*, 851 F. Supp. 2d 583, 595 (S.D.N.Y. 2012). This award is mandatory. *See Barfield v. N.Y.C. Health & Hosps. Corp.*, 537 F.3d 132, 151 (2d Cir. 2008).

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[1] While Plaintiff also alleges in the Complaint a violation of the NYLL for failure to provide uniform maintenance pay, Plaintiff acknowledges that there is no basis for this claim as Plaintiff received in excess of the sum of the minimum wage and the weekly uniform maintenance pay for the entirety of her employment, and she is thus entitled to no additional compensation for uniform maintenance pay.

The amount of attorney's fees to which a party is entitled is based on the presumptively reasonable fee, sometimes called the lodestar. *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 183, 189–90 (2d Cir. 2008). The presumptively reasonable fee is the product of the reasonable hours in the case and the reasonable hourly rate. *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011).

The reasonable hourly rate is determined by whether "the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984). However, the Court may adjust the hourly rate to account for other case-specific variables, *Arbor Hill*, 522 F.3d at 184, including the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 92-93, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989):

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved or the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability of the case;' (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Hensley v. Eckerhart, 461 U.S. 424, 430 n.3 (1983) (citing *Johnson*, 488 F.2d at 717–19); *see also Arbor Hill*, 522 F.3d at 186 n.3 (citing the *Johnson* factors). But the Court need not make separate findings as to all twelve *Johnson* factors. *Lochren v. Cnty. of Suffolk*, 344 Fed. App'x 706, 709 (2d Cir. 2009).

Plaintiff is represented in this action by the Law Office of Justin A. Zeller, P.C., a law firm specializing in wage and hour litigation and incorporated in 2005. The sole shareholder of the law firm is Justin A. Zeller, an attorney who graduated law school in 2002 and has specialized in wage and hour law since 2005. Associated with the law firm is Brandon D. Sherr, who graduated law school in 2010, and John M. Gurrieri, who graduated law school in 2013, who both have since been associated with this law firm and have specialized in wage and hour law. These three lawyers appeared in this action for Plaintiff. This law firm has represented plaintiffs in over 300 actions with similar claims in this Court alone, and many others in the Eastern District of New York and the District of New Jersey, and in the courts of the State of New York.

Recent reasonable hourly rates awarded in similar cases range from $200 to $600 per hour for similar small firms. *See Rosendo v. Everbrighten Inc.*, No. 13 CV 7256, 2015 U.S. Dist. LEXIS 50323, at *23–24 (S.D.N.Y. Apr. 7, 2015) (finding rates for three attorneys from a small firm specializing in wage and hour litigation over five other cases to be from $200 to $425 and awarding between $225 and $400); *Guallpa v. NY Pro Signs Inc.*, No. 11 CV 3133, 2014 U.S. Dist. LEXIS 77033, at *28–30 (S.D.N.Y. May 27, 2014) (finding rates for three attorneys from one small firm over three other wage and hour cases to be from $350 to $600 and awarding within the same range in wage and hour case).

Mr. Zeller's reasonable hourly rate has been considered three times by courts and he was found in the Eastern District of New York to be entitled to a rate of $350 in 2015 and $300 per hour in 2011, *see Galicia v. 63-68 Diner Corp.*, No. 13 CV 3689, slip op. at 3–5 (E.D.N.Y. Aug. 13, 2015); *Rodriguez v. Queens Convenience Deli Corp.*, No. 09 CV 1089, 2011 U.S. Dist. LEXIS 120478, at *16 (E.D.N.Y. Oct. 18, 2011), and $250 in this district in 2013. *See Maldonado v. Bistro 1285 Inc.*, No. 11 CV 4294, 2013 U.S. Dist. LEXIS 70815, at *12 (S.D.N.Y. May 13, 2013).

Mr. Sherr's reasonable hourly rate has been considered four times by this Court and he was found to be entitled to rates of $300 in 2015 and 2016, and $200 and $250 per hour in 2013. *See Carvente-Avila v. Chaya Mushkah Rest. Corp.*, No. 12 CV 5359, slip op. at 6 (S.D.N.Y. May 10, 2016); *Patterson v. Copia NYC LLC*, No. 15 CV 2327, slip op. at 15–16 (S.D.N.Y. Dec. 29, 2015); *Maldonado*, 2013 U.S. Dist. LEXIS 70815, at *12; *Palacios v. Z & G Distribs., Inc.*, No. 11 CV 2538, 2013 U.S. Dist. LEXIS 112676, at *18 (S.D.N.Y. Aug. 6, 2013).

Mr. Gurrieri's reasonable hourly rate has been considered once by this Court and he was found to be entitled to a rate of $250 per hour in 2013. *See Patterson*, slip op. at 15–16.

Certain of the *Johnson* factors are applicable in consideration of the reasonable hourly rate, specifically the customary fee, whether the fee is fixed or contingent, and the undesirability of the case. Plaintiff has entered a contingent fee agreement with Plaintiff's counsel. The agreement provides a backup hourly rate of $500 per hour. It is the experience of Plaintiff's counsel that wage and hour cases against small pharmacy employers have a substantial risk that, even if ending in a judgment, the judgment will be uncollectable or very difficult to collect. This is because small pharmacies can be undercapitalized and have few valuable assets, since most valuable inventory, pharmaceuticals, is controlled and cannot easily be resold to satisfy a judgment. Violations of the wage and hour laws also frequently indicate financial distress or insolvency. Law firms that represent employees in such cases on a contingent fee basis may never recover their attorney's fees or costs. The market rate for legal services for such clients is therefore higher because of these risks. This is such a case against a small pharmacy. Accordingly, the reasonable hourly rate should be adjusted to reflect the contingent fee, the customary rate, and to compensate for the risk inherent in taking this case.

Plaintiff would have requested that the Court find reasonable hourly rates of $450 for Mr. Zeller, $350 for Mr. Sherr, and $300 for Mr. Gurrieri. These rates are within the range previously found reasonable for this nature of action in this forum, reflect adjustments for the above-discussed factors, and allow a modest increase over rates previously awarded to these attorneys commensurate with their increased experience.

To determine the reasonableness of the hours, a party seeking an award of attorney's fees must submit contemporaneous time records indicating the hours and the nature of the work done. *See Lewis v. Coughlin*, 801 F.2d 570, 577 (2d Cir. 1986); *N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983); *Puglisi v. Underhill Park Taxpayer Ass'n*, 964 F. Supp. 811, 817 (S.D.N.Y. 1997).

Plaintiff attaches contemporaneous time records of Plaintiff's counsel as Exhibit B. The included description with each entry corresponds to the descriptions in the American Bar Association's Uniform Task-Based Management System, a broadly recognized system of documenting hours. Courts even recommend its use for motions for attorney's fees. *See Albion Pac. Prop. Res., LLC v. Seligman*, 329 F. Supp. 2d 1163, 1174 (N.D. Cal. 2004); *Yahoo!, Inc. v. Net Games, Inc.*, 329 F. Supp. 2d 1179, 1189 (N.D. Cal. 2004) ("Although the court considers plaintiff's data in the manner presented, the American Bar Association's "Litigation Code Set" provides a more uniform methodology for categorizing requested hours. *See* American Bar Association ("ABA"), Uniform Task-Based Management System Information, *available at* [http://www.americanbar.org/groups/litigation/resources/uniform_task_based_management_system.html]. The ABA template commends itself to parties applying for fee awards."). Similar productions by Plaintiff's counsel of such contemporaneous time records have been found by the Court to be "complete." *Palacios*, 2013 U.S. Dist. LEXIS 112676, at *18–19. Mr. Zeller's hours in this action are 6.7, Mr. Sherr's, 12.3, and Mr. Gurrieri's, 3.5.

The 22.5 total hours sought are reasonable, appropriately delegated among the involved attorneys requisite to their experience, and necessary to the litigation of this action. So far, the plaintiff would be entitled to an attorney's fees award, based on the presumptively reasonable rate, of $8,370.00.

Additionally, Plaintiff's costs total $540.82, and include $400.00 for the filing fee to initiate this action, $140.00 for service of process, $.52 for supplies, and $.30 for fees for searching for related cases prior to filing of the lawsuit. These expenses were prepaid by Plaintiff's counsel. Exhibit B includes an enumeration of these costs.

The total of attorney's fees based on the presumptively reasonable rate and costs is $8,910.82. The proposed settlement provides for $10,940.82 to be paid by Defendants to Plaintiff's counsel. Nothing additional is to be paid by Plaintiff to Plaintiff's counsel. The settlement was determined based on the 40% contingent fee percentage of the gross settlement amount of $26,000 plus expenses recorded at the time. The settlement amount to Plaintiff's counsel represents a multiple of 1.2 times the presumptively reasonable rate plus costs. Settlements of this multiple are frequently found to be fair.

The proposed settlement agreement additionally includes a mutual general release. Courts in this district have found that mutual general releases in non-class FLSA settlements are fair and reasonable. *Plizga v. Little Pol. Rest. Inc.*, 2016 U.S. Dist. LEXIS 94859 (S.D.N.Y. Jul. 18, 2016); *Chauca v. Abitino's Pizza 49th St. Corp.*, 2016 U.S. Dist. LEXIS 86206 (S.D.N.Y.

June 29, 2016); *Souza v. 65 St. Marks Bistro*, 2015 U.S. Dist. LEXIS 151144 (S.D.N.Y. Nov. 6, 2015). "Where, as here, a plaintiff who no longer works for the defendants files individual claims, including an FLSA claim, and then settles her case for more than she could likely win at trial on the FLSA claim, she should not be forbidden by the courts from entering into the same mutual general releases that are the norm in most other non-class litigation settlements." *Plizga*, 2016 U.S. Dist. LEXIS 94859 at *18. Because Plaintiff is a former employee receiving in excess of her maximum damages, the general release is mutual, and this is not class litigation, the Court should approve the mutual general release provision.

Thank you for your consideration.

Respectfully,

/s/ Eric W. Ruden

Eric W. Ruden

EWR:jb
cc: Justin A. Zeller, Esq. (via ECF)

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made and entered into by and between Plaintiff Margarette Reyes ("Reyes") and Defendants Prime Aid Pharmacy Corp. (the "Company"), Alex Fleyshmakher, Igor Fleyshmakher, and Samuel Khaimov[1] (collective "Defendants").

WHEREAS, the Company employed Reyes from on or about May 2013 to January 4, 2016;

WHEREAS, Reyes commenced an action against the Company in the United States District Court, Southern District of New York, entitled "MARGARETTE REYES v. PRIME AID PHARMACY CORPORATION, ALEX FLEYSHMAKHER, IGOR FLEYSHMAKHER, and SAMUEL KHIMOV", Case No. 16-cv-2789 (the "Action");

WHEREAS, Defendants have denied and continue to deny all of Reyes's allegations and have denied and continue to deny that they have any liability to Reyes on any of her claims; and

WHEREAS, the parties have reached certain agreements and understandings between them with regard to Reyes's claims against Defendants and Defendants' respective defenses to Reyes's claims, and desire to settle fully and finally any and all claims, disputes and obligations between them that relate to Reyes and her employment by the Company, in order to avoid the time, effort and expenses involved in litigation.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. Settlement Payments. In consideration of the withdrawal of the Action with prejudice by Reyes and the releases and covenants not to sue and other terms and conditions set forth in this Agreement, the Company shall pay Reyes and her attorney the gross sum of Twenty-Six Thousand Dollars and no cents ($26,000.00) (the "Settlement Amount"). The Settlement Amount shall be paid out as follows: (i) a check made payable to "Margarette Reyes" in the gross sum of Seven Thousand Five Hundred Twenty-Nine Dollars and Fifty-Nine Cents ($7,529.59), less all required tax withholdings and deductions, to be reported on IRS Form W-2; (ii) a check made payable to "Law Office of Justin A. Zeller, P.C." in the gross sum of Seven Thousand Five Hundred Twenty-Nine Dollars and Fifty-Nine Cents ($7,529.59), representing liquidated and other damages, for which an IRS Form 1099 will be issued to Reyes; and (iii) a check made payable to "Law Office of Justin A. Zeller, P.C." in the gross sum of Ten Thousand Nine Hundred Forty Dollars and Eighty-Two Cents ($10,940.82), which amount shall be dual reported on IRS Forms 1099 to Reyes and to her lawyers ("Settlement Payments"). The Settlement Amount is fully inclusive of the Company's payment of any and all attorneys' fees and costs incurred by Reyes in connection with the Action or any other matter related to Defendants.

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[1] Samuel Khaimov's name is spelled incorrectly in the Complaint.

The Settlement Payments shall be remitted within seven (7) days after the Court approves the Agreement and after Defendants' attorneys have received properly executed W-9s for all payees. The Settlement Payments shall be remitted to Reyes's counsel, Justin A. Zeller, Esq., Law Office of Justin A. Zeller, P.C., 277 Broadway, Ste. 408, New York, NY 10007.

2. **Indemnification for Tax Allocation.** Notwithstanding the Company's obligation regarding payroll taxes, in the event of a determination by a federal, state or local taxing authority that the tax allocation of the liquidated and other damages portion of the Settlement Amount was improper, Reyes shall pay any and all required employee taxes and shall indemnify and hold the Company and its attorneys harmless from any interest, penalties and costs (including reasonable attorneys' fees) as a result of any claim by the federal, state or local taxing authorities that the tax allocation of the liquidated and other damages portion of the Settlement Amount in Paragraph 1 was improper.

3. **Benefits Not Otherwise Entitled To.** Reyes acknowledges that the Settlement Payments specified in Paragraph 1 are provided in addition to and otherwise exceed any payment, benefit or other thing of value to which Reyes might otherwise be legally entitled to receive from Defendants.

4. **Stipulation of Dismissal.** Simultaneously with execution of the Agreement, Reyes's counsel will sign and return to counsel for Defendants a Stipulation and Order of Dismissal with Prejudice.

5. **Acknowledgement of Full Payment of Employment Based Compensation.** Reyes agrees that Defendants have paid to her all of the wages, bonuses, expenses, severance pay, accrued vacation and holiday pay and all other employee benefits due and owing to her as a result of his employment with the Company, as of the date of this Agreement, and that Defendants owe Reyes no other wages, overtime, bonuses, vacation and holiday pay, employee benefits, expenses or other compensation or payments of any kind or nature, other than as provided in this Agreement.

6. **Release by Reyes.** In consideration of the mutual promises and valuable consideration exchanged pursuant to this Agreement, the receipt and adequacy of which are hereby acknowledged by Reyes, Reyes hereby releases and discharges the Company, Alex Fleyshmakher, Igor Fleyshmakher, and Samuel Khaimov, and each of their respective present, former and future parents, shareholders, subsidiaries, affiliates, related companies, divisions, directors, trustees, officers, employees, attorneys, heirs, assigns, successors and agents (collectively, the "Company Releasees"), from any and all claims, causes of action, suits, debts, controversies, judgments, decrees, damages, liabilities, covenants, contracts and agreements, regardless of subject matter, whether known or unknown, in law or equity, whether statutory or common law, whether federal, state, local or otherwise, including, but not limited to, any claims relating to, or arising out of any aspect of Reyes's employment with the Company or his termination thereof, as of the date of his execution of this Agreement, including without limitation:

(a) any and all claims arising under any federal, state, or local labor and employment law statute, including, but not limited to, Title VII of the Civil Rights Act of 1964,

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the Age Discrimination in Employment Act of 1967 ("ADEA"), the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Employee Retirement Income Security Act of 1974, the Family Medical Leave Act of 1993, the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, the New York State Executive Law, the New York Labor Law, the New York City Human Rights Law, and the New York City Administrative Code;

(b) any and all claims arising under common law, including, but not limited to, claims for defamation, libel, slander, false imprisonment, personal injury, invasion of privacy, breach of contract, express or implied contract or covenant of good faith and fair dealing, tort, negligence, or tortious interference with business relations; and

(c) any and all claims for monetary recovery, including, but not limited to, minimum and overtime wages, spread of hours wages, back pay, severance pay, front pay, bonuses, fringe benefits, expenses, liquidated, compensatory and punitive damages, emotional distress, attorneys' fees, disbursements and costs.

To the extent any claim is not releasable, Reyes acknowledges that the payments and consideration received hereunder more than offset any monetary sums owing to Reyes from any non-releasable claim. Nothing herein shall be construed to prohibit Reyes from exercising her rights as specified in Paragraph 8(c) or shall prevent Reyes from enforcing the terms of this Agreement.

7. Release by Defendants. In consideration of the mutual promises and valuable consideration exchanged pursuant to this Agreement, Defendants and their heirs, successors, assigns, transferees, and attorneys, past, present, or future (the "Company Releasors") hereby unequivocally and fully release, acquit, and forever discharge Reyes and her respective heirs and executors (hereinafter collectively, the "Reyes Releasees") from any and all claims, suits, debts, liens, liabilities, losses, obligations, promises, costs, fees, attorneys' fees, causes of action, rights, damages, and demands of every kind and description whatsoever, in law or in equity, whether known or unknown, fixed or contingent, suspected, disclosed or undisclosed, or claimed from the beginning of the world through the effective date of this Agreement, including, but not limited to, the claims relating to and set forth in the Lawsuit.

8. No Suits.

(a) Reyes further represents that other than the Action, she has never commenced or filed and covenants not to commence, file, voluntarily aid or in any way prosecute or cause to be commenced or prosecuted against the Company Releasees, any action, charge, complaint or other proceeding, subject to the provisions of Paragraph 8(c). In the event Reyes files any civil complaint or commences any litigation of any kind that is covered by the release in this Agreement, Reyes shall not be entitled to receive any further consideration hereunder, shall immediately tender back all consideration received under this Agreement theretofore, and shall pay all reasonable attorneys' fees, expenses and costs incurred by the Company Releasees in connection with this Agreement and such complaint or litigation.

(b) In the event Reyes files any civil complaint or commences any litigation of any kind that is covered by the release in this Agreement, Reyes shall immediately tender back all consideration received under this Agreement and pay all of the attorney's fees, expenses and costs incurred by the Company Releasees in connection with the complaint or action filed, provided that this sentence shall not apply to any claim by Reyes that the waiver and release herein of any age discrimination claim was not knowing and voluntary under the ADEA. The Company Releasees shall also have the right of set-off against any obligation to Reyes under this Agreement. In addition to the remedies noted above, the Company Releasees may pursue all other remedies available under law or equity to address Reyes's breach of this Agreement.

(c) Nothing in this Agreement shall be construed to prohibit Reyes from filing a charge with or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission, the National Labor Relations Board, the Securities and Exchange Commission, the Occupational Safety and Health Administration or other government agency charged with the enforcement of any law. Notwithstanding the foregoing, Reyes agrees to waive her right to recover monetary damages or any personal relief (including, but not limited to, reinstatement, back pay, front pay, damages, and attorneys' fees) in connection with any such charge or complaint, as well as with regard to any charge, complaint or lawsuit filed by anyone else on Reyes's behalf, provided this shall not apply to certain claims filed with the Securities and Exchange Commission or with regard to any other claim not releasable as a matter of law. Further, the tender back provision in Paragraph 8(b) above shall not apply to any administrative charges or filings referenced in this Paragraph 8(c). To the extent permissible by law, the Settlement Payments will be credited against any sums received by Reyes pursuant to a claim not releasable as a matter of law.

9. Knowing and Voluntary Waiver. Notwithstanding any other provision of this Agreement to the contrary:

(a) Reyes agrees that this Agreement constitutes a knowing and voluntary waiver of all rights or claims Reyes may have against the Releasees.

(b) Defendants hereby advise Reyes of her right to consult with an attorney prior to executing the Agreement. Reyes acknowledges that she has been given a period of at least twenty-one (21) days in which to consider the Agreement. If Reyes executes the Agreement at any time prior to the end of the twenty-one (21) day period that Defendants gave her in which to consider the Agreement, such early execution was a knowing and voluntary waiver of Reyes's right to consider the Agreement for least twenty-one (21) days. Reyes has a period of seven (7) days following execution of the Agreement to revoke the Agreement after she signs it by providing a letter to Defendants' counsel, Eric W. Ruden, Esq., Duane Morris, LLP, 1540 Broadway, New York, NY 10036, stating her intent to revoke the Agreement. The Agreement shall become effective on the eighth day after Reyes executes this Agreement unless Reyes revokes it prior thereto (the "Effective Date").

(c) Reyes's acceptance of the Settlement Payments specified in Paragraph 1 at any time subsequent to seven (7) days after Reyes's execution of the Agreement, shall constitute an admission by Reyes that she did not revoke the Agreement during the revocation period of seven (7) days, and shall further constitute an admission by Reyes that the Agreement has become effective and enforceable.

10. **Non-Admission of Wrongdoing**. This Agreement shall not in any way be construed as an admission of liability by the Company Releasees of any wage violation, discrimination, harassment, unlawful conduct, or any other wrongful acts whatsoever, against Reyes or any other person.

11. **Non-Disparagement**. Reyes agrees that she will not, whether directly or indirectly, make any disparaging remarks about any of the Company Releasees, their business or personal practices, operations or properties, except as may be required by law. Nothing in this Paragraph 11 shall be construed to prohibit Reyes from exercising Reyes's rights as specified in Paragraph 8(c).

12. **References**. The Company agrees that upon a reference request by Reyes or a future employer, the Company will only confirm Reyes's dates of employment, position held, and her rate of pay.

13. **Notice**. Any notices required hereunder shall be sent to the parties by first class mail or any other delivery mechanism (including federal express, fax and email) provided the party can demonstrate proof of receipt at the addresses stated in the introductory paragraph to this Agreement, or any other address which the parties hereto shall subsequently advise the other parties of in writing.

14. **Entire Contract/Modification**. This Agreement sets forth the entire agreement among the parties hereto and supersedes in its entirety any and all prior agreements, understandings or representations relating to the subject matter hereof and may not be modified orally. The parties hereto represent that in executing this Agreement, they do not rely on any statement or fact not set forth herein. This Agreement may be executed in counterparts and facsimile signatures will have the same force and effect as originals. This Agreement may not be modified except by a writing signed by all parties hereto.

15. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any action to enforce this Agreement shall be commenced within a court of appropriate jurisdiction within the State of New York, in the County of New York. Should either party seek to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of litigation.

16. **Acknowledgement**. Reyes expressly acknowledges and represents that she has carefully read this Agreement; that she fully understands the terms, conditions and significance of this Agreement; that Defendants advised her of her right to consult with an attorney concerning this Agreement; that she has consulted with her attorneys, Law Office of Justin A. Zeller, P.C., who have represented her in the Action and throughout the settlement negotiation process; that she was given a reasonable period of time of at least 21 days to review this Agreement with her attorney; and that she has executed this Agreement voluntarily, knowingly and with such advice of her attorney as she has deemed appropriate.

17. **Headings.** The headings contained herein are for convenience of reference only and are not intended to define, limit, expand or describe the scope or intent of any provision of this Settlement Agreement.

WHEREFORE, the Parties hereto have agreed and accepted this Settlement Agreement as of the date indicated below.

AGREED AND ACCEPTED:

Margarette Reyes
MARGARETTE REYES

11/1/16
Date

PRIME AID PHARMACY CORP.

BY: _______________
Print Name:
Title:

11/7/16
Date

ALEX FLEYSHMAKHER

11/7/16
Date

IGOR FLEYSHMAKHER

11/7/16
Date

Samuel Kh
SAMUEL KHAIMOV

11/7/16
Date

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EXHIBIT B

Time Sheet

11/09/2016

Reyes v. Prime Aid Pharmacy

Date Range: 5/5/2010 - 11/9/2016

Status: Pending/Released/Transfered/Exception

Date	Hrs	Timekeep
04/08/2016	.80	JMG Pleadings, Draft/revise, Fact Investigation/Development
04/14/2016	1.40	JMG Pleadings, Draft/revise, Manage data/files
04/15/2016	.20	BDS Other Written Motions and Submissions, Draft/revise
05/25/2016	.10	JMG Pleadings, Manage data/files
05/25/2016	.10	JMG Pleadings, Manage data/files
05/25/2016	.20	JMG Pleadings, Draft/revise, Manage data/files
06/20/2016	.20	JMG Pleadings, Manage data/files, Communicate (other outside counsel)
06/27/2016	.20	JMG Pleadings, Manage data/files, Other
07/07/2016	.20	JMG Pleadings, Manage data/files
07/22/2016	.10	JMG Settlement/Non-Binding ADR, Communicate (other outside counsel)
07/26/2016	.10	JMG Settlement/Non-Binding ADR, Communicate (other outside counsel)
08/05/2016	.30	BDS Fact Investigation/Development, Communicate (other outside counsel)
08/05/2016	4.50	BDS Dispositive Motions, Research, Draft/revise
08/23/2016	.10	BDS Fact Investigation/Development, Communicate (other outside counsel)
08/23/2016	.20	BDS Fact Investigation/Development, Communicate (other outside counsel)
08/26/2016	.20	BDS Settlement/Non-Binding ADR, Communicate (other external), Communicate (other outside counsel)
09/03/2016	2.40	JAZ Settlement/Non-Binding ADR, Appear for/atten and preparation
09/08/2016	.10	JMG Settlement/Non-Binding ADR, Communicate (other outside counsel)
09/08/2016	4.40	BDS Written Discovery, Draft/revise, Document Production, Manage data/files, Communicate (other outside counsel), Other Written Motions and Submissions, Draft/revise, Communicate (other outside counsel), Court Mandated Conferences, Draft/revise, Communicate (other outside counsel), Fact Investigation/Development, Communicate (other outside counsel)
09/09/2016	.20	BDS Fact Investigation/Development, Communicate (other outside counsel)
09/09/2016	.40	BDS Other Written Motions and Submissions, Draft/revise
09/19/2016	.30	JAZ Settlement/Non-Binding ADR, Review/analyze applicable case law send by opposing counsel

Time Sheet

Reyes v. Prime Aid Pharmacy

Date Range: 5/5/2010 - 11/9/2016

Status: Pending/Released/Transfered/Exception

Date	Hrs	Timekeep
09/19/2016	.50	BDS
		Pleadings, Draft/revise
09/27/2016	.80	BDS
		Settlement/Non-Binding ADR, Draft/revise
10/02/2016	.10	JAZ
		Settlement/Non-Binding ADR, Communicate (other outside counsel)
10/05/2016	.10	JAZ
		Settlement/Non-Binding ADR, Communicate (other outside counsel)
10/11/2016	.40	JAZ
		Document review of settlement agreement/File Management, Review/analyze
10/19/2016	.50	JAZ
		Document/File Management, Draft/revise settlement agreement
10/20/2016	.10	JAZ
		Settlement/Non-Binding ADR, Communicate (other outside counsel)
10/27/2016	.30	JAZ
		Document revision of settlement agreement/File Management, Communicate (other outside counsel)
11/01/2016	.40	JAZ
		Settlement/Non-Binding ADR, Communicate (with client). Client meeting to review agreement and execution
11/02/2016	.20	JAZ
		Settlement/Non-Binding ADR, Communicate (other outside counsel)
11/02/2016	.20	JAZ
		Document Review of Fairness letter and applicable case law/File Management, Review/analyze
11/03/2016	.50	BDS
		Other Written Motions and Submissions, Draft/revise
11/03/2016	1.50	JAZ
		Other Written Motions and Submissions, Draft/revise
11/07/2016	.20	JAZ
		Settlement/Non-Binding ADR, Draft/revise

Total hours: 22.50

Case Costs

11/09/2016

1002 - Reyes v. Prime Aid Pharmacy
Date Range: All

Date	User	Type	Quantity	Amount
4/14/2016	**JMGURRIERI**	**Case records**		**.30**
4/14/2016	**JMGURRIERI**	**Court fee**		**400.00**
7/27/2016	**JCARLO**	**Process server** Invoice #: 201621732		**140.00**
9/8/2016	**BSHERR**	**Supply**		**.52**
			Total:	**540.82**